

83-1133

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

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FILED

DEC 22 1983

ALEXANDER L. STEVENS

CLERK

CASE NO. _____

SYLVIA BEHAR,

PETITIONER

VS.

SOUTHEAST BANK TRUST CO.N.A.
Personal Representative of the
Estate of ALBERTO BEHAR.

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO
U.S.COURT OF APPEALS, ELEVENTH
CIRCUIT.

SYLVIA BEHAR.

PETITIONER.

45 E.Rivo Alto Drive.
Miami Beach, Fla. 33139
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QUESTION PRESENTED FOR REVIEW

WHETHER A DISMISSAL OF CAUSE FOR
IMPROPERLY PRESENTING THE CASE
INVOLVING FRAUD IN SETTLEMENT
AGREEMENT AND ESTATE TAXES IS IN
VIOLATION OF CIVIL AND CONSTITUTIONAL
RIGHTS OF DUE PROCESS._

OPINIONS BELOW

On September 26, 1983 a Judgement was entered in the U.S.Court of Appeals 11th Circuit it is hereby to be reviewed and is reprinted in Appendix B.

JURISDICTION

The Jurisdiction of the Sup.Court is invoked: Rule of Sup.Ct.17 a) c)

42 U.S.C.A.1983; 26 U.S.C.A.7201

28 U.S.C.A. 1343.

22 Fla.Jur.EQUITY. Sec.23

The Case to be reviewed is a Civil Case wherein PETITIONER's Civil and Constitutional Rights were violated and evasion of Estate Taxes using PETITIONER's Name.

CONSTITUTIONAL PROVISION INVOLVED

U.S.CONST.AMEND.V AND XIV. " No person shall be deprived of Life, Liberty or Property without Due Process of Law."

STATEMENT OF THE CASE AND THE FACTS.

COMPLAINT no.83-0168 filed by PETITIONER in proper person on January 1983 in the Federal Court, Miami Division, pursuant to Rule of Federal Civ.Proc. 9b) involves FRAUD in a Settlement Agreement resulting in Deprivation of Property without Due Process of Law (XIV Amend U.S.Const). In this Agreement it appears PETITIONER will receive Husband's 1/2 interest in the family home worth \$600,000.00 and Cash Money \$150,000.00 as a charge against the estate and she will not receive for lack of Jurisdiction in the Trial Court.

PETITIONER'S civil rights have been violated as she could not understand the terms of the Agreement involving a FRAUD. PETITIONER is a Cuban American at that time with a poor command of the English language and was unrepresented by Counsel because she had no

money to pay Attorneys Fees.

The Case also involves FRAUD in Estate Taxes using PETITIONER's Name. In Tax Forms it appears PETITIONER will receive from the Settlement \$286,000.00 and it is false, it is with the evil intention of evading Taxes.

COMPLAINT No.83-0168 was dismissed in the Federal Court Feb.2,1983 alleging lack of Jurisdiction appealed to U.S.Court of Appeals Feb.25,1983; Petition for rehearing denied on Sept.26, 1983, Case No.83-5223. This is the Case to be reviewed by the Honorable Court.

COMPLAINT No. 81-498 filed in the Federal Court on March 1981 for a Rescission of Deed in the family home and Punitive Damages was dismissed in that Court without prejudice for not timely filing the Pre Trial Stipulations . PETITIONER IS entitled to refile

The Case under Case No.83-0168.

The Tax Evasion appeared in Estate Tax Forms filed in the Federal Court by the PETITIONER's request in a Motion to Produce under the Case 81-498. This Case dismissed in U.S.Court of Appeals Case No.81-6104 ; U.S.Sup.Court on Jan.1983.Case No.82-371.denied Writ of cert.

PETITIONER has exhausted all means she has available in Federal and State Courts without any good results, the Courts have been impassive to a FRAUD to the PETITIONER AND to the U.S.Government in Estate Taxes.

REASONS FOR GRANTING THE WRIT

PETITIONER's Civil and Constitutional Rights of Due Process have been violated in Federal and State Courts, resulting in Deprivation of Property (XIV Amend U.S.Const.) it has so far departed from the accepted usual course of Judicial Proceedings or so far sanctioned such a departure by a Lower Court as to call for an exercise of this Court's power of supervision. (Sup. Court Rule 17 a) c).

PETITIONER signed Nov/79 a Property Settlement in the Trial Court unrepresented by Counsel because of poor financial situation, the amount involved was One Million Dollars.

PETITIONER's command of the English language was limited and did not comprehend the terms of the Agreement involving a FRAUD AND Jurisdictional issue surrounding the Case, lack of Jurisdiction of Trial Court after Petitioner's Husband's Demise on January 1979

in Divorce Proceedings.

According to the Settlement Agreement it appears the PETITIONER RECEIVES husband's 1/2 interest in the family home, as a charge against the Estate. PETITIONER owns the other 1/2 interest Trial Judge informed PETITIONER SHE would receive the entire Property.

It also appears PETITIONER receives the amount of \$150,000.00 in Cash Money as a charge against the Estate.

Trial Court lost Jurisdiction after husband's demise because Trial Judge maliciously granted a Divorce to the PETITIONER On Sept. 1978 and postponed Property Settlement to a later hearing fully aware 80 years old husband was terminally ill with short time to live.

Trial Judge did not reserve Jurisdiction to charge against the Estate the Awards of the PETITIONER. according to Attorneys consulted the awards in the Agreement are ZERO.

PETITIONER reposed all her trust and confidence in the Trial Judge who assured her all the Awards were Correct and Total

PETITIONER's rights of Equal Protection were violated . Civil Rights U.S.C.A. 28, 1343.

The Hearing for Property Settlement was sham, not appropriate for the nature of the Case. Mullane V. Central Hannover Trust Co. 70 Sup.Ct. 652. the Hearing must be granted in a meaningful manner. Armstrong v. Manzo 85 Sup. Court 1187.

In Estate Tax Forms filed in the Federal Court, Miami Division it appears the PETITIONER will receive the amount of \$286,000.00 from the Agreement. It is a fraudulent Form prepared by the Attorney for the Estate, he has the knowledge of the truth, he willfully and feloniously prepared it with the evil intention of evading U.S. Taxes using the PETI-

TIONER's Name. It has been proven beyond any reasonable doubt that Attorney for RESPONDENT should be convicted of FRAUD and felony. U.S.C.A. 26.sec.7201. Fundamental Percept in the Administration of Justice in the Federal Court is that accused be tried and convicted. Forman V.U.S. 261 F.2D.181; Wilson v.U.S. 250 F.2D. 312.

A Dismissal of Case in Federal Court for not filing Pre Trial Stipulations was an unfair ruling in COMPLAINT No.81-498. PETITIONER did not file the Stipulations because she filed a Motion to Stay Proceedings. The Case was dismissed without prejudice.

The COMPLAINT No. 83-0168, to be reviewed by the Honorable Court was dismissed in the Federal Court, Miami Division, on February 3, 1983, for lack of jurisdiction and improperly stata a cause of action.

The Jurisdiction of the Federal Court

was invoked under Federal Rule of Civ.Proc.

9b) Evasion of Taxes 26 U.S.C.A.7201; Civil Rights 28 U.S.C.A. 1343.

PETITIONER invoked the Doctrine of Equitable Estoppel.Fed.Rule of Civil Procedure 8c) be applied to her Case for an Equitable relief in Law and Equity to receive Clear Title of the family home and \$150,000.00 in Cash Money as stipulated in open Court.

ESTOPPEL. JACKSON V. TRAVELERS 403 F.Supp.986 "No man may take advantage of his own wrong.:" This Case bars reliance in Statute of Limitations and grants punitive damages in irreparable injury.

JANKE CONSTRUCTION V.VULCAN 527 f.2d.772. Misconceived Legal Theory did not preclude it from obtaining relief under another Legal Theory.Fed.Rule of Civ.Proc.8 a). District Court overlooked in dismissingCOMPLAINT our

liberal Rule of Federal practice under which COMPLAINT is not to be dismissed because the Attorneys (APPELLANT in this Case) has misconceived proper legal theory but is sufficient to show that PLAINTIFF is entitled to relief that the Court can grant.

INVESTORS SYNDICATE V. INDIAN ROCK BEACH, 434 f.2d 879. " COMPLAINT should not be dismissed for failure to state a cause of action unless it appears beyond any doubt PLAINTIFF can prove no fact in support of which would entitle her to relief. "

EQUITY Equity will not permit wrong to go without remedy when litigant has exhausted all available remedies without result, relief may be properly granted. " 22 Fla. Jur. Sec. 23. Equity.

42 U.S.C.A. 1983 grants Federal Jurisdiction to enforce Const. Amend. 14 if there is significant involvement of the State, provides

redress for deprivation of rights under color of Law.

PETITIONER FINALLY states she came from CUBA in 1960 to this great Country of Law and Justice, she has been defrauded of all all her rights and wealth accumulated in 20 years of marriage to Millionaire ALBERTO

BEHAR AND SAVINGS FROM CUBA, it is ironically worse than in CUBA, in a Communist Country you are not deprived of your family home.

PETITIONER's only son is locked like a a prisoner in a State Mental Hospital PETITIONER has no money to litigate for son's custody to save her only son from the criminal actions of greedy Attorneys for the Estate and son's Guardian desperate to control all the money.

PETITIONER admires and loves this beautiful Country and the Constitution but feels and resents its sacred wonderful principles have not been applied in the administration of Justice.

C O N C L U S I O N

IN View of the importance of facts consequences and points of Law raised by PETITIONER in full violation of Civil and constitutional rights, a writ of certiorari is requested to review the Judgement of the U.S.Court of Appeals, Eleventh Circuit.

PETITIONER prays for Justice to the U.S.Supreme Court for an Equitable remedy to protect PETITIONER's Civil and Constitutional rights.

Respectfully submitted,

Sylvia Behar
SYLVIA BEHAR
PETITIONER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true Copy of the document was mailed to: MICHAEL MANN, 3050 Biscayne Blvd.Miami Florida.

December 20, 1983.

Sylvia Behar
SYLVIA BEHAR
PETITIONER.

45 E.Rivo Alto Drive
Miami Beach, Fla. 33139.

IN THE SUPREME COURT OF THE UNITED
STATES

SYLVIA BEHAR,

PETITIONER

VS.

SOUTHEAST BANK TRUST CO.N.A.
Personal Representative of the
Estate of ALBERTO BEHAR.

RESPONDENT.

APPENDIX

BY: SYLVIA BEHAR.
PETITIONER.
45 E.Rivo Alto Drive.
Miami Beach, Florida, 33139.-

UNITED STATES DISTRICT
COURT OF FLORIDA, MIAMI
DIVISION. _

SYLVIA BEHAR

CASE NO.83-0168

PLAINTIFF

VS.

SOUTHEAST BANK TRUST CO.N.A.
Personal Representative of the
Estate of ALBERTO BEHAR. & COMPLAINT.

DEFENDANT.

PLAINTIFF for its COMPLAINT SAYS and alleges;

1. PLAINTIFF is a citizen of the United States and resident of Florida. The amount involved is in excess of \$10,000.00.

2. PLAINTIFF filed a COMPLAINT in that Court no.81-498 CIVV.on March 6, 1981(Copy attached) Case dismissed on October 2, 1981 for not filing Pre-Trial Stipulations,Cert.denied Sup.Ct. Case no.82-371 on January 10, 1983.

3. The Case involves a Fraud in Settlement Agreement in Divorce Proceedings.Fed.Rule of

Civ.Proc.9 b), resulting in Deprivation of Property without Due Process.XIV AMEND.U.S. CONST. and Tax Evasion using PLAINTIFF's Name.

4. PLAINTIFF contends there is state action in her Case. PLAINTIFF unrepresented by Counsel reposed all her Trust and Confidence in the Trial Judge who deficient to protect her Federal and Constitutional rights assured her all Awards were Correct and Total(Copy Attached) It was wrong, a FRAUD, Trial Judge lost Jurisdiction after husband's demise.

5. PLAINTIFF further contends she is a Cuban American with limited education and at that time limited command of the English language, her Civil Rights of Equal Protection were violated 42 U.S.C.A.1983.Main Goal of Civ.Rights Act.1871.

6.PLAINTIFF invokes the Doctrine of Equitable Estoppel pursuant to Fed.Rule of Civ.Proc. 8c) to protect her title in the family home

as stipulated an also to the amount of \$150,000.00 in a Certificate in PLAINTIFF's Name, presently in the Jurisdiction of the Probate Court. Attorneys could be deducted from this amount of money, PLAINTIFF would be left penniless on welfare, without a home, worse than in Cuba, Fidel Castro respects the family home.

This amount was originally placed in Legal Custody in the Trial Court in Divorce Proceedings before husband's demise.

As more bakground in this Case PLAINTIFF all the problems originated in a Divorce Proceedings in the Trial Court wherein Trial Judge granted a Divorce and postponed Property Settlement for a later hearing fully aware 80 years old husband ALBERTO BEHAR was acting irrational and was critically ill.

7. PLAINTIFF's violated Civil Rights and Tax evasion were Federal subjects never raised.

8. PLAINTIFF's only son incompetent GEORGE BEHAR is kept like a prisoner in a State Mental Hospital, his Guardian Appointed by Trial Judge(a friend and protege) is acting against son's best interest but to control money. PLAINTIFF has no money to litigate for son's custody, this is also a violation of her federal and constitutional rights.

9. Attorneys Fees should not be awarded to Attorneys for DEFENDANT who cannot profit from their own wrong, if proven guilty of Fraud, Felony, etc. The Court should have Judgement entered against DEFENDANT in the amount of \$200.000.00 for punitive damages.

THEREFORE PLAINTIFF requesta to that Honorable Court to protect her violated Federal rights in an equitable relief and remedy at Law! Federal Courts could step in where State Courts were unable or unwilling to pro-

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tect Federal Rights. The Court could also
appoint a Curator or Administrator ad Litem
to adequately protect PLAINTIFF and her sick
son from criminal greedy Attorneys.

SIGNED THIS 20th day of
January, 1983.

SIGNED: Sylvia Behar
SYLVIA BEHAR.
plaintiff.

45 E. Rivo Alto Drive
Miami Beach, Florida. 33139

IN THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

No.83-5223

SYLVIA BEHAR, Plaintiff-Appellant
VS.

SOUTHEAST BANK TRUST CO.N.A.
Personal Representative of the
Estate of ALBERTO BEHAR.

Defendant-Appellee.

Appeal from the United District
Court for the Southern District of Florida.

Before FAY, VANCE AND KRAVITCH, CIRCUIT JUDGES.
BY THE COURT:

IT is ordered that Appellant's Motion
for reconsideration of the Court Order filed
August 16, 1983, granting Appellee's Motion
to dismiss Appeal is denied.

COPY FILED
U.S.COURT OF APPEALS
ELEVENTH CIRCUIT
SEP.26, 1983
Spencer D.Mercer.-